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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CIVIL REVISION 318 **/2003** Single Bench

PETITIONERS
PLAINTIFFS

1. K.D.SINGH
   Aged about 51 years S/o Harnath singh By caste Kshertriya, Agriculturist and Ex-Sarpanch, Gram panchayat Bortalab
2. Dhanraj aged about45 years S/o Karu by caste Kalaar

Both R/o Village Bortalab Tahsil Dongargarh Distt. Rajnandgaon

P. R. No. 325/03
Presented by Shri Pareek Kotecha
dated 13.11.03

VERSUS

RESPONDENT
DEFENDANT

MUKESH KUMAR
aged about 42 years S/o Kundanlal ujbane R/o Village Bortalab Tah Dongargarh Distt. Rajnandgaon

CIVIL REVISION UNDER SECTION 115 OF CODE OF CIVIL PROCEDURE 1908

passed by the learned

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Civil Revision No.318 of 2003

K.D. Singh and another

- Versus -

Mukesh Kumar

POST FOR ORDER ON 22nd MARCH, 2004

Sd/-
L.C.BHADOO
Judge

22.03.2004

(B1)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Civil Revision No.318 of 2003

K.D. Singh and another

- Versus -

Mukesh Kumar

Present: -

Shri Parag Kotecha, Advocate: For the petitioners

Shri Prafull Bharat, Advocate: For the respondent

Before: Hon'ble Shri Justice L.C. Bhadoo

ORDER

(Passed on 22nd March, 2004)

1. The petitioners have preferred this civil revision under Section 115 of the Code of Civil Procedure, 1908, being aggrieved by the appellate judgment and decree dated 08.09.2003 passed by the 1st Additional Sessions Judge, Rajnandgaon, in Civil Appeal No.30-A/2002, whereby the learned appellate Court reversed the finding of the trial Court and dismissed the suit of the respondent for malicious prosecution on the ground that the suit was barred by limitation.

2. Relevant facts for the disposal of this revision are that in the year 1990, the pond of Village: Bortalab was constructed and in the year 1992 the respondent herein who was the Panch at the relevant time made a complaint to the Collector, Rajnandgaon, regarding the irregularities committed by the petitioners herein in the construction of the village pond. Petitioner No.1 was the Sarpanch of the village and petitioner No.2 was working as a Mate at the relevant time. It was also published in the daily newspaper '*Savera Sanket*' in its edition-dated 27.07.1992 under the caption "Irregularities in preparation of Muster Roll". Based on that complaint of the respondent herein a case was registered against the petitioners at the Police Station: Dongargarh, for the commission of offence punishable under Sections 409, 467 & 468 read with Section 34 of the I.P.C. and during the investigation, the petitioners were arrested and they were sent to jail also. After completion of the investigation, the Police Station: Dongargarh filed charge sheet against the petitioners in the Court of Judicial Magistrate, 1st Class, Dongargarh, for the commission of the

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aforementioned offences and a criminal case was registered at number 361/92. After hearing the arguments on the charge, the petitioners were discharged vide order dated 30th August, 1995 by the learned Judicial Magistrate against which the State preferred a criminal revision which was registered and numbered as 135/95. The said criminal revision was dismissed on 30.04.1997 by the 2nd Additional Sessions Judge, Rajnandgaon. Based on that, the petitioners herein filed a civil suit on 18.10.1997 for malicious prosecution against the respondent for financial loss, mental agony and physical suffering to the tune of Rs.30,000/-. The trial Court decreed the suit to the tune of Rs.18,000/-. Being aggrieved by the above judgment and decree of the Civil Judge, the respondent herein preferred an appeal and the learned Additional District Judge allowed the appeal and reversed the judgment and decree of the trial Court.

3. I have heard the learned counsel for the parties.

4. The main point raised by the petitioners herein in this revision relates to interpretation of Article 74 of the Limitation Act, 1963, which reads thus,

> "74. For compensation for a malicious prosecution.
>
> Period of limitation: One year.
>
> Starting point of limitation: When the plaintiff is acquitted or the prosecution is otherwise terminated."

5. Learned counsel for the petitioners argued that the finding of the appellate Court is illegal because the petitioners herein were discharged by the trial Court on 30.08.95 against which the State preferred criminal revision and that criminal revision was dismissed on 30.04.97, therefore, the limitation commenced only from the date of the judgment of the revisional Court i.e. 30.04.97. He placed reliance on the judgment of a Full Bench of the Madras High Court in the case of **Soora Kulasekara Chetty and another v. Tholasingam Chetty** reported in **AIR 1938 Madras 349**.

6. On the other hand, learned counsel for the respondent submitted that as per the provisions of Article 74 of the Limitation Act, starting point of the limitation was the date of discharge i.e. 30.08.95, not the date of disposal of the revision. He placed reliance on the judgments in the cases of **Bhaskar Narhar Deshmukh v. Kisanlal Sadasukhdas and another** reported in **AIR 1968 Bombay 21**; **Madho Lal v. Hari Shanker and another** reported in **AIR**

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1963 Allahabad 547; Jogendra Garabadu and others v. Lingaraj Patra and others reported in **AIR 1970 Orissa 91**.

7. In the case of **Soora Kulasekara Chetty** ***(supra)***, the Full Bench of the Madras High Court, held that the proceedings had not terminated on the date of discharge, because the complainant took further steps with a view to securing their conviction and filed the revision. Whereas in the case of **Bhaskar Narhar** ***(supra)***, a Division Bench of the Bombay High Court held that "time of limitation began to run from date of acquittal by trial Court – Mere filing of appeal could not suspend period of limitation". It was held that "A mere appeal cannot be said to do away with the effect of the original acquittal recorded in the case and it cannot, therefore, suspend the period of limitation". In the case of **Jogendra Garabadu** ***(supra)***, the Orissa High Court held that suit for damages for malicious prosecution, the period of limitation will commence from the date of termination of the criminal proceedings. "In criminal case protest petition filed by complainant against dropping of proceedings against accused – Protest petition cannot be treated as continuation of the proceedings – Proceedings terminated on the day when they were dropped." Similarly, in the case of **Madho Lal** ***(supra)***, the Allahabad High Court held that "Time will run from acquittal in Trial Court and not from dismissal of revision against acquittal."

8. In the light of the above judgments, if we look into the provisions of Article 74 of the Limitation Act, which says that the time will commence from the date of acquittal or the prosecution is otherwise terminated, that means either when the accused is acquitted or the criminal proceeding is terminated otherwise than acquittal i.e. discharge or dismissal of the complaint or dropping of the criminal proceedings under the provisions of the Criminal Procedure Code. The acquittal or otherwise termination of proceedings are not different stages of a criminal case. In other words, the provisions of this Article does not include the judgment of appellate or revisional Court for the purpose of starting of limitation, but it refers the mode of termination of the criminal proceedings i.e. acquittal or otherwise which include discharge, dismissal of complaint or other form. The time of limitation for filing suit for malicious prosecution starts from the date of acquittal or the prosecution is otherwise terminated by the trial Court. This Article nowhere prescribes that the limitation will start on attaining the finality of the acquittal or termination of the criminal proceedings. It simply envisages the time for limitation for filing malicious prosecution. Time starts from the date when the accused is acquitted or the criminal proceedings are

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terminated otherwise. Acquittal means either by the trial Court or if there is conviction by the trial Court then acquittal by the appellate Court passed in appeal or revision. In case where the acquittal has been ordered by the trial Court and the complainant file any revision or appeal, that cannot effect the order of acquittal already passed. It will remain an order of acquittal till the acquittal is converted into an order of sentence. As per the law of limitation, once the limitation starts no subsequent event can suspend the commencement of the limitation. Therefore, as per Article 74 of the Limitation Act, once the limitation starts from the date of acquittal or discharge or termination of the proceedings otherwise, then filing of any revision or appeal against that order does not suspend the limitation which already commenced. In the circumstances, in my opinion, the view taken by the Bombay and Allahabad High Courts is correct.

9. Therefore, in view of the above, in the present matter, the limitation started on 30th August, 1995, and the suit was filed on 18th October, 1997. In the circumstances, the suit was time barred as it was filed after the expiry of the limitation of one year from the date of discharge.

10. In the result, the learned appellate Court has not committed any illegality or material irregularity in passing the impugned judgment and decree and dismissed the suit of the petitioners being time barred. Therefore, the revision is without merit and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

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